DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenants for an order for the return of double their security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to the return of double their security deposit?

Background, Evidence and Analysis

The parties agreed that the tenancy began on May 1, 2009 and ended on April 30, 2010. The landlord currently holds an $825.00 security deposit and an $825.00 pet deposit. The rental unit was a new home and had not been occupied prior to the beginning of the tenancy.

I address the landlord's claims and my findings around each as follows.

[1] **Landlord's coordination and travel expenses.** The landlord seeks to recover $135.00 for the time he spent coordinating repairs and his gas driving to various stores. While the landlord is entitled to compensation for time he spent performing repairs, I find that the claim for his time spent coordinating work by trades and for his gas must be characterized as a cost of doing business as a landlord. I find that the landlord's time performing business-related duty is not compensable under the Act and I dismiss the claim.

[2] **Oven liner.** The landlord seeks to recover $368.47 as the cost of replacing an oven liner. The landlord stated that at the outset of the tenancy the tenants were given a copy

of the oven manual which specifically states that tin foil is not to be used to line the self-cleaning oven. The tenants could not recall having been given the manual for the oven. In an inspection early in 2010, the parties agreed that the landlord discovered tin foil in the bottom of the oven. The tenants immediately removed the foil and did not use foil in the oven again. The tenant D.P. stated that he and his wife at no time used foil in the oven. The tenant S.S. testified that until the landlord discovered the foil in the oven, she had no idea that foil could not be used to line the oven. In order to prove his claim the landlord must establish not only that the tenants used foil in the oven, but that the tenants were aware or should have known that foil should not be used to line the oven. I find that the tenants cannot be expected to have known this intuitively and I am not satisfied that the tenants were given instructions to avoid the use of tinfoil. I therefore find that the landlord has not met his burden of proof and I dismiss the claim.

[3] **Painting.** The landlord seeks to recover $58.03 as the cost of painting supplies and $225.00 as the cost of hiring a painter. The parties agreed that the tenants had caused damage to the walls and that at the very least, the areas in question needed to be repainted. The tenants did not dispute the cost of painting supplies. Having reviewed the photographs and invoice from the painter which shows that the landlord paid $225.00 for painting, I find the landlord's claim to be reasonable. I find that the tenants must be held responsible for the cost of repairing the damage to the walls and I award the landlord $283.03

[4] **Cleaning.** The landlord seeks to recover $400.0 paid to a cleaning service to clean the rental unit. The landlord testified that the tenants did not adequately clean the rental unit and that provided evidence showing that he paid $400.00 to have the unit professionally cleaned. The landlord testified that the cleaning was performed by the owner/operator of the business and her son working together. The son was charged out at a rate of $15.00 per hour and the owner was charged out at a rate of $25.00 per hour. The tenants acknowledged that some additional cleaning was required, but testified that the rates charged by the cleaning service were excessively high. Further, the tenants argued that the landlord required an impossibly high standard of cleanliness when section 37(1) of the Act requires just that the tenants leave the rental unit reasonably clean. The landlord

submitted into evidence recordings showing the condition of the rental unit. While the video shows the condition of the rental unit, it also shows the landlord applying what might be termed a “white glove” test to determine the cleanliness of the unit. The landlord described condition of the unit at the end of the tenancy as a mess, but this characterization is not borne out by the video evidence. I agree that some additional cleaning was required, but I find that the landlord expected the unit to be more than just reasonably clean. I find that an additional 4 hours of cleaning would have brought the unit to a reasonable standard. I award the landlord $80.00 which represents 2 hours of cleaning at a rate of $25.00 per hour and 2 hours of cleaning at a rate of $15.00 per hour. I do not find these rates to be excessive.

[5] **Carpet cleaning.** The landlord seeks to recover $266.81 as the cost of cleaning the carpets in the rental unit. The parties agreed that the carpets were not professionally cleaned at the end of the tenancy and the tenants agreed that they should be held responsible for reasonable charges. The landlord submitted evidence showing that he paid $266.81 to clean the carpets throughout the unit. I find this charge to be reasonable and I award the landlord $266.81.

[6] **Carpet replacement.** The landlord seeks to recover $1,121.40 as the cost of replacing the carpet in the master bedroom of the rental unit. The landlord testified that at the end of the tenancy there were stains from pet urine on the carpet and that the odour had permeated both the carpet and the underlay. The landlord testified that even after cleaning the carpet the stains could not be removed and the odour remained. The tenant D.P. who occupied that bedroom during the tenancy acknowledged that his dog had urinated on the carpet at least once and no more than five times but disputed that replacement of the carpet was necessary. The tenant S.S. testified that she was aware of D.P. having left his dog alone in the bedroom for more than 24 hours on one occasion. The landlord’s video which was taken before the carpet was cleaned shows stains on the bedroom carpet. I accept that D.P.’s dog urinated at least once and more probably several times on the bedroom carpet. I find it more likely than not that the odour produced by the tenants’ dog was absorbed by the carpet and underlay and that professional cleaning did not remove the odour. I find that the tenants should be held

responsible for the cost of replacing the carpet. At the hearing the landlord acknowledged that he was not entitled to recover the full value of the carpet as it was a year old and agreed that his claim should be reduced by 20% to account for depreciation and reasonable wear and tear. I find this to be reasonable and I award the landlord $897.12 which is 80% of the cost of the carpet replacement.

[7] **Basement floor cleaning.** The landlord seeks to recover $304.61 as the cost of cleaning the basement floor in the rental unit. After some discussion the tenants agreed that this was a reasonable charge and accordingly I award the landlord $304.61.

[8] **Additional cleaning.** The landlord seeks a total of $80.00 in compensation for the time he and his wife spent cleaning the light fixtures, doors, garage and microwave vent in the rental unit. The landlord testified that these were areas which were not cleaned by the professional cleaning service he hired. The tenants acknowledged that they did not clean the light fixtures or microwave vent and that the garage may have required cleaning. I accept that additional cleaning was required to bring the unit to a reasonable standard of cleanliness, but having viewed the video and photographs, I find the time claimed to be excessive and find that if 4 hours was spent cleaning those areas, the result would have been to bring the areas to a standard which exceeds the standard required by the Act. I find that $40.00 will adequately compensate the landlord for the extra cleaning and I award the landlord that sum.

[9] **Light bulb replacement.** The landlord seeks to recover $14.74 as the cost of light bulbs that required replacing. The tenants agreed that the landlord is entitled to recover the cost of the bulbs. I award the landlord $14.74.

[10] **Loss of income.** The landlord seeks to recover loss of income totalling $750.00 for the 15 days in which the rental unit was undergoing cleaning and repairs. The landlord testified that he had a tenant who was prepared to move in on May 1 but that because of the cleaning required in the unit, the landlord told her the unit was not ready. The prospective tenant did not view the inside of the unit after the tenants vacated and eventually found other accommodation. The tenants acknowledged that some award for loss of income would be appropriate but argued that the landlord made the choice to tell

the prospective tenant that the unit was not ready rather than permitting her to make her own assessment. I find that the responsibility for the loss of income for the 15 day period claimed must be visited upon both parties. If the tenants had cleaned the rental unit as required and had not damaged the carpet, the unit would have been available to the prospective tenant on May 1. However, I am not satisfied that the prospective tenant could not have moved into the unit within a few days of the beginning of the month and I find that the landlord should have at the very least shown the interior of the unit to the prospective tenant and permitted her to make the decision as to whether she felt she could occupy the unit. I find that an award for 5 days of lost income is appropriate and I award the landlord $250.00.

[11] **Power washing.** The landlord seeks to recover $126.00 as the cost of power washing the garage, driveway, patio and sidewalk. The landlord testified that there were oil spills in the garage and driveway and that the patio had been soiled by plants. The tenant D.P. disputed the claim and argued that the damage could be characterized as reasonable wear and tear. The tenant S.S. testified that she believed the landlord should be entitled to the reasonable cost of cleaning the garage and patio. I find that the power washing charge is reasonable and I find that the tenants have not proven that they made an attempt to clean the areas in question. I award the landlord $126.00.

[12] **Water bill.** The landlord seeks to recover $232.13 in unpaid water bills. The tenants agreed that the landlord is entitled to this sum. I award the landlord $232.13.

[13] **NSF charges.** The landlord seeks to recover $64.00 in NSF charges. The tenants agreed that they are responsible for these charges. I award the landlord $64.00.

[14] **Filing fee.** The landlord seeks to recover the $50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord $50.00.

In summary, the landlord has been successful in the following claims:

Painting	$ 283.03
Cleaning	$ 80.00
Carpet cleaning	$ 266.81

Carpet replacement	$ 897.12
Basement floor cleaning	$ 304.61
Additional cleaning	$ 40.00
Light bulb replacement	$ 14.74
Loss of income	$ 250.00
Power washing	$ 126.00
Water bill	$ 232.13
NSF charges	$ 64.00
Filing fee	$ 50.00
Total:	**$2,608.44**

The tenants claim the return of double their security deposit as the landlord did not mail to the tenants his application for dispute resolution until May 18 and they did not receive the application until May 27. The tenancy ended and the tenants provided the landlord with a written forwarding address on April 30, 2010. Section 38(1) of the Act requires the landlord to act within 15 days of the later of the date the tenancy ends and the date he receives the tenants' forwarding address in writing. A landlord who does not act within 15 days is liable to return to the tenants double the amount of the security deposit. The landlord has the option of either returning the security deposit in full or filing an application for dispute resolution. In this case, the landlord chose to pursue dispute resolution. The landlord filed his application with the Residential Tenancy Branch on May 14. The Act does not require the landlord to give a copy of his claim to the tenants within 15 days of the end of the tenancy in order to avoid liability for double the deposit, but merely to file his claim within that period. I find that the landlord complied with section 38 of the Act and I dismiss the tenants' claim for double the security deposit.

I note as well that the tenants argued that because they did not receive a copy of the condition inspection report within 15 days of the end of the tenancy as is required under section 35(4) of the Act and section 18(1)(b) of the Regulations, the landlord has extinguished his right to make a claim against the security and pet deposits. I find that it is not necessary to make a finding on this issue. There is nothing in the Act that prevents a landlord who has extinguished his claim against the security and pet deposits from making a monetary claim against the tenants and section 72(2)(b) of the Act permits me to deduct a monetary award from security and pet deposits. In the interest of administrative efficiency I find it appropriate to apply the deposits to the award granted to the landlord.

Conclusion

The landlord has established a claim for $2,608.44. I order that the landlord retain the $825.00 security deposit and the $825.00 pet deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of $958.44. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' claim is dismissed.

Dated: June 28, 2010